F. M. S. REPORTS

[ORIGINAL CIVIL JURISDICTION]

Howes, J.

[APPELLATE CIVIL JURISDICTION]

Thomas, C.J., Cussen & Aitken JJ.

June 17, 1937.

PURAN SINGH.....Plaintiff-Appellant

v.

KEHAR SINGH

BAHADUR SINGH.....Defendant-Respondents

[PERAK CIVIL APPEAL No. 11 of 1936]

Land Code—Section 42 (iii)—Registration —Insufficient instrument—Substituted attorney —Estoppel against statutory provision.

The appellant was the registered proprietor of certain lands. He resided in India. The first respondent, his brother held his power of attorney which contained a power to substitute. The first respondent, being about to visit India executed a power of attorney in the name of the appellant in favour of one F.S. signing the instrument, not as attorney of the appellant, but as "Puran Singh" the appellant. This instrument was fascimile of the instrument from the appellant to the first respondent. On proceeding to India the first respondent himself gave a power of attorney to the second respondent. A little later F.S. in exercise of the power of substitution executed a substitute power of attorney in favour of the second respondent. The second respondent, by virtue of the substituted power of attorney transferred the aforesaid lands to the first respondent. The appellant sued for a declaration that the transfer of the lands to the first respondent was void.

Held, that the registration of the first respondent had been effected by means of an "insufficient instrument".

Held further, that there can be no estoppel against a statutory provision in an Enactment which legislates on a matter of general interest.

At the trial of the suit *E. Jeff* appeared for the plaintiff; the first defendant appeared in person; and *J. L. Woods* and *H. G. Nelson* for second defendant. The facts sufficiently appear from the judgment.

HOWES, J.—Prior to August, 1932, the plaintiff was the registered proprietor of four pieces of land under E.M.R. Saiong Nos. 4,910, 4,917, 4,834 and 4,833.

On the 29th August, 1932, the second defendant, Bahadur Singh purporting to sign as attorney for the plaintiff, transfered these lands to the first defendant, Kehar Singh (whose attorney the second defendant also was at that time) for an alleged consideration of $3,000. In fact, no money passed. Bahadur Singh therefore signed the transfer in a dual capacity, viz., as attorney for both transferor and transferee, and in due course Kehar Singh was registered as, and is still on the register as proprietor of these lands.

The plaintiff now seeks: (1) a declaration that the above transfer to Kehar Singh was void; (2) an order to rectify the register and that the plaintiff be registered as the proprietor; (3) a declaration that the lands are not liable to be sold by the second defendant in exercise of his purported lien; (4) an order that the sale of the lands in pursuance of the decree in Civil Suit 153/34 be cancelled; (5) further relief; (6) costs.

The claim is based on section 42 (iii) of the Land Code which reads: "If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void."

The plaintiff's case is that when, on 29th August, 1932, Bahadur Singh executed the transfer, Bahadur Singh was not his attorney, and therefore had no power to transfer the lands to Kehar Singh; and consequently the registration was obtained by means of an insufficient or void instrument, and was therefore void.

This is the substance of the plaintiff's claim.

This case is interwoven with Civil Suit 149/34, in which the second defendant Bahadur Singh was the plaintiff, and the present plaintiff was principal defendant. In that case, Bahadur Singh sued as holder in due course on a promissory note, made in the name of Puran Singh "by his attorney Kehar Singh" and in respect of which other E.M.R.'s were deposited as collateral security by Kehar Singh, and on which Bahadur Singh claimed a declaration of lien. Puran Singh therein, through Kehar Singh his attorney, counterclaimed; and in his counterclaim pleaded that Bahadur Singh was his attorney from 18th October, 1928, to 30th May, 1934, during which period (it was stated) Bahadur Singh managed Puran Singh's moneylending business and rubber estates, and Puran Singh claimed an account of such management.

Civil Suit 149 of 1934 was tried by me and both the claim and counterclaim were dismissed on 29th May, 1935.

It is beyond doubt that from the 1st October, 1923, Kehar Singh was by virtue of a Power of Attorney No. 67/23, Kuala Kangsar (Ex. 9), the properly constituted attorney of Puran Singh, until that power of attorney was revoked by Puran Singh by letter dated 11th May, 1935 (Ex. 26) on which date Puran Singh appointed his present attorney, Bishen Singh, by Power of Attorney No. 41/35 Kuala Kangsar (Ex. 23).

It was by virtue of the Power of Attorney No. 67/23 that the present plaintiff, through Kehar Singh, defended Civil Suit 149/34, and filed the above quoted counterclaim. In that case, and in the present, right up to the close of the defendant's case (the defendants began), it was the contention of Bahadur Singh that Puran Singh was either non-existent, and that the name

was only an *alias* of Kehar Singh, or that he was merely a nominee of Kehar Singh and was not his brother. Also, that the person who appeared as plaintiff in this case was not Puran Singh, the former registered proprietor of the lands in question.

However, Mr. Woods for the second defendant ultimately admitted, for the purpose of this case, and this case only, that the person who appeared as plaintiff is Puran Singh, and is the brother of Kehar Singh.

By virtue of Power of Attorney No. 67/23, Kuala Kangsar, Kehar Singh in the name of Puran Singh, on 23rd September, 1936, by Power of Attorney No. 94/26, Kuala Kangsar, appointed Fauja Singh attorney of the plaintiff, not disclosing the fact he (Kehar Singh) did so in exercise of his power of substitution. A certified copy of this document appears as Exhibit 18. On the 25th September, 1926, Kehar Singh also appointed Fauja Singh as his own attorney by Power of Attorney No. 96/26, Kuala Kangsar (Ex. 19). The certified copy of this power of attorney shows that it was revoked on the 5th June, 1934.

On 11th October, 1928, Fauja Singh, acting under his supposed power of subsitution contained in Power of Attorney 94/26, Kuala Kangsar, as attorney of Puran Singh, appointed the second defendant Bahadur Singh as his substitute and attorney of Puran Singh by Power of Attorney No. 74/28. Kuala Kangsar (Ex. 5). This power was also revoked on 5th June, 1934. On the same day, Fauja Singh by a similar Power of Attorney No. 75/28, Kuala Kangsar (Ex. 6) appointed the second defendant Bahadur Singh to be his substitute and attorney of Kehar Singh. This power was also revoked on 5th June, 1934.

On 25th October, 1930, Kehar Singh by Power of Attorney registered as No. 27/32, Kuala Kangsar (made at Jullundur city) appointed the second defendant Bahadur Singh as his own attorney (Ex. 8). This appointment was revoked on 22nd December, 1933.

The position of the second defendant Bahadur Singh was that from 11th October, 1928, till 5th June, 1934, he believed himself to be, by substitution, the attorney of Puran Singh. From 11th October, 1928, till 5th June, 1934, he was the substituted attorney of Kehar Singh; and from 25th October, 1930, till 22nd December, 1933, Bahadur Singh was also the direct attorney of Kehar Singh.

In Civil Suit 149 of 1934, I held (and there has been no appeal from my decision) for the reasons set out on pages 5-7 of the judgment attached to Exhibit 1, that Fauja Singh, being a substituted attorney, had no power to substitute the second defendant Bahadur Singh as his attorney, so as to make Bahadur Singh the agent and attorney of the original donor of the power of attorney, namely of the plaintiff Puran Singh. I held that the position of Bahadur Singh was only that of a sub-agent, and as such, under section 192 of the Contract Enactment, he was responsible for his acts to the agent, Fauja Singh, and not to the principal Puran Singh.

It was on this ground that in Civil Suit 149/34 I dismissed the counterclaim against Bahadur Singh for accounts regarding his management of Puran Singh's business.

That judgment is really the foundation of the plaintiff's present suit. Since I held that Bahadur Singh was not the attorney of Puran Singh at the material date when the transfer of the lands in question to Kehar Singh was made, viz., 29th August, 1932, the plaintiff submits that the registration of Kehar Singh as proprietor of the lands is void.

As I have already stated, Mr. Jeff's argument for the plaintiff is that the registration of Kehar Singh as proprietor was obtained "by means of an insufficient or void instrument," viz., under an invalid power of attorney; and under section 42 (iii) of the Land Code the registration was consequently void. On the face of it, his argument appears to be unanswerable, in view of my finding in Civil Suit 149 of 1934.

There are, however, many other factors to consider; and in particular the question of estoppel.

At the material date, viz., the 29th August, 1932, the plaintiff cannot deny that Kehar Singh was his properly constituted attorney. Fraud on the part of Bahadur Singh has not been pleaded, and at that date whilst Kehar Singh was in India, Bahadur Singh was under the (erroneous) belief that he was, by substitution, the properly constituted attorney of the plaintiff. This also was obviously the belief of Kehar Singh since he so stated in the counterclaim in Civil Suit 149/34.

At that time, Bahadur Singh was under the belief that Kehar Singh was in fact Puran Singh, and this is supported by the evidence of several witnesses who also knew Kehar Singh as Puran Singh. No one had seen Puran Singh; and the suggestion was (and this was supported by the conduct of Kehar Singh throughout all these transactions) that Puran Singh was merely an *alias* of Kehar Singh. Take, for instance, the evidence of Alang Mohamed Yassin, the Penghulu, Senggang, who identified Kehar Singh as Puran Singh in memorandum of transfer No. 879/25 (Ex. 14D) in which Puran Singh was the transferee and which was signed in his name by

Kehar Singh. This witness stated "The transferee there was called Puran Singh. That is he with the yellow turban in Court. (Points to first defendant). I attested his signature and I knew him as Puran Singh.....I have known him before by the name of Puran Singh. I never heard of him by another name."

Bahadur Singh in his evidence admitted having transferred the four pieces of land from the name of Puran Singh to that of Kehar Singh. He said "I was asked by Kehar Singh to do so. I received instructions by post from India..... .....I have not the letter now. I remember having received instructions. On the transfer of the four pieces, a consideration of $3,000 is expressed but no money passes." Of the four pieces of land, E.M.R. 4,917 had been in the name of Kehar Singh before it was in that of Puran Singh, and so far as this E.M.R. was concerned the transfer was merely putting it back into the name of Kehar Singh.

At that date, no explanation has been offered by the plaintiff as to why Bahadur Singh should have effected the transfer, unless he received instructions from Kehar Singh to do so, although subsequent events, some 20 months later, viz., on 13th April, 1934, when Bahadur Singh became assignee for value of two pro-notes given by Kchar Singh to Amrit Kaur, in respect of one of which these titles were deposited as collateral security, show that if on the 29th August, 1932, Bahadur Singh could have foreseen this course of events, it would have been to his advantage to transfer the lands to Kehar Singh. It is, however, possible that Bahadur Singh had this in mind in August, 1932.

For Bahadur Singh, Mr. Woods' strong point is that while Bahadur Singh was acting for the plaintiff under his supposed power of attorney, Bahadur Singh completed several transactions relating to the plaintiff's registered lands, of which plaintiff has had the benefit, viz., in June, 1932, he transferred six pieces of land registered in the name of Puran Singh (Ex. 14G) to a Chetty to wipe out a charge given to the Chetty by Kehar Singh as attorney for Puran Singh.

In February, 1929, he sold one piece of land to a Chinese woman for $1,410 (Ex.14H). In March, 1929, he sold another plot registered in the name of Puran Singh for $600 (Ex. 15). These sums Bahadur Singh brought to account, and were included in the account which he finally settled with Kehar Singh on behalf of himself and Puran Singh. These were the accounts which were the subject matter of the counterclaim in Civil Suit No. 149/34, and the receipt of which was acknowledged by Kehar Singh on a document (Ex. 7) on 30th September, 1933, in which he acknowledged "the receipt of all my accounts including that of my brother Puran Singh from Bahadur Singh of Kuala Kangsar who has been our attorney."

In Civil Suit 149 of 1934 Kehar Singh disputed the genuineness of that document, but I held on the weight of evidence that Kehar Singh did sign this document.

The chief difficulty of Bahadur Singh is that he cannot produce the letter of instructions which he says he received from Kehar Singh, nor has it been proved that they were ever sent. Kehar Singh in his evidence denied that he ever gave Bahadur Singh instructions by letter to transfer the lands. Moreover, Kehar Singh stated that after transferring the lands into his (Kehar Singh's) name Bahadur Singh on 12th September, 1932, deposited the titles with Amrit Kaur as security for a new promissory note (in renewal of a promissory note given by Kehar Singh to Amrit Kaur in 1929 which was on the point of becoming statute-barred) which Bahadur Singh gave to Amrit Kaur in his capacity of attorney to Kehar Singh.

Now, this transaction seems to me highly suspicious. Kehar Singh admits having given a promissory note to Amrit Kaur in 1929, in respect of which no collateral security was given. In 1932 while Kehar Singh was in India, and Bahadur Singh was his attorney, this promissory note was nearing expiry. From Exhibit 27, a letter dated 20th August, 1932, by Kehar Singh to Bahadur Singh (translation attached) it is clear that Bahadur Singh had written about some pro-note which was about to expire. Kehar Singh gives no instructions for renewal, but on the contrary points out "As you have been paying interest, the limitation period of 3 years will only be counted from date of payment." No word of instructions to transfer Puran Singh's land to Kehar Singh, and yet this letter, presumably, would have been received by Bahadur Singh a few days before the 29th August, 1932, the date of the transfer in question.

The anxiety of Bahadur Singh, as attorney of Kehar Singh, to renew a promissory note about to expire is unexplained. There is nothing to show that Amrit Kaur was pressing for repayment, and yet in spite of Kehar Singh's letter (Ex. 27) to Bahadur Singh, less than a fortnight after the transfer of Puran Singh's lands to Kehar Singh (and, according to Kehar Singh without his knowledge), Bahadur Singh, in his capacity of attorney to Kehar Singh, gives Amrit Kaur a new promissory note, and he deposits, on 12th September, 1932, the very titles now in dispute as collateral security!

On 23rd January, 1933, in Civil Suit 41/33 (*vide* Ex. 1. p. 4) Amrit Kaur sued Kehar Singh for $5,000 principal, on the pronote of 12th September, 1932. Judgment, by default, was given in her favour by Gerahty, J., on 24th April, 1933, and an order for sale of the lands deposited as security was made. On 27th October, 1933, Amrit Kaur's solicitors wrote to the Registrar saying that the case had been settled, and the sale was cancelled.

Kehar Singh at that date had returned from India; and by the terms of settlement he gave Amrit Kaur a pro-note for $4,400 in respect of which seven titles were deposited including the four titles the subject of the present suit. The pro-note was signed by Kehar Singh personally, on 19th October, 1933. On the same day, Kehar Singh (also as a term of the settlement) gave Amrit Kaur another pro-note for $1,200 in respect of which two E.M.R.'s Saiong Nos. 4,926 and 4,897 registered in the name of Puran Singh were deposited. This pro-note for $1,200 was signed by Kehar Singh in the name of Puran Singh "by my attorney Kehar Singh."

From the fact that Kehar Singh, on the 19th October, 1933, gave these two promissory notes (one personally, and one as attorney for Puran Singh) it is absurd for him now to say that the transfer of the four plots in question on 29th August, 1932, was made without his knowledge or consent. By the promissory note for $4,400 in order to prevent Amrit Kaur executing her judgment against him, Kehar Singh deposited the four titles in question, and in addition, gave the promissory note for $1,200 in the name of Puran Singh, and deposited the two above-mentioned E.M.R.'s Saiong Nos. 4,926 and 4,897.

At that date, Kehar Singh was still the properly constituted attorney of Puran Singh.

These promissory notes were respectively the subject matter of Civil Suit 149 of 1934 and Civil Suit 153 of 1934.

On 13th April, 1934, Amrit Kaur endorsed the promissory note for $4,400 in favour of Bahadur Singh, and in Civil Suit 153/34 Bahadur Singh, as holder in due course, sued Kehar Singh personally and Amrit Kaur as nominal co-defendant. Judgment was given for the plaintiff Bahadur Singh against Kehar Singh, the suit against Amrit Kaur being dismissed. A declaration of lien and order for sale was made for the seven titles deposited as collateral security, which included the four pieces of land now in dispute.

On the same day (13th April, 1934) Amrit Kaur endorsed the promissory note for $1,200 in favour of Bahadur Singh, and in Civil Suit 149/34 Bahadur Singh, as holder in due course, sued Puran Singh "by his attorney Kehar Singh" and Amrit Kaur was again added as nominal defendant. The suit against Amrit Kaur was dismissed at the opening of the case; and subsequently that against Puran Singh, by my judgment in that suit, to which I have already referred.

That, as shortly as I can put it, concludes the story of these shady transactions.

Whilst it is undeniable that the transfer by Bahadur Singh as attorney of Puran Singh of the lands in question on 29th August, 1932, to Kehar Singh was obtained by means of an "insufficient" instrument since the power of attorney under which Bahadur Singh acted had no force, the question now arises as to whether the plaintiff can be allowed to plead this at this stage, having regard to his conduct and that of his attorney Kehar Singh.

When it suited the plaintiff, as in the counterclaim in Civil Suit 149/34 through Kehar Singh his attorney, the plaintiff in para. 10 stated—

> "the plaintiff (Bahadur Singh) was his attorney for period 18th October, 1928, to 30th May, 1934, by virtue of Power of Attorney No. 74/28 during which period the plaintiff managed the defendants' money-lending business and rubber estates."

Now, since I held in that case that the power of attorney was insufficient, the plaintiff seeks to show that Bahadur Singh had no authority to make the transfer of the 29th August, 1932.

Kehar Singh when he came back from India in October, 1933, was aware of the transfer of the four plots to himself, as he deposited these titles together with three others with Amrit Kaur as security for his promissory note for $4,400. He, then as attorney for Puran Singh, never questioned the propriety of the transfer, which he now asks me to believe was made without his instructions. Nor did he, as attorney for Puran Singh, take steps to have the transfer set aside.

It is clear that the plaintiff Puran Singh has taken the benefit of the other transactions carried through by Bahadur Singh in his supposed capacity of attorney of Puran Singh, and the plaintiff has, according to the accounts accepted by Kehar Singh as his attorney, been credited with $2,000 in respect of these transactions.

In my own mind, I have no doubt whatever that in the beginning, at the time when Kehar Singh was a policeman, and as such debarred from holding land, he bought land in the name of Puran Singh to cloak the true ownership, and obtained the Power of Attorney No. 67/23, Kuala Kangsar, to enable him to deal with the lands

registered in the name of Puran Singh. For all practical purposes Kehar Singh was Puran Singh in this country, and until Puran Singh arrived recently, no one here had ever seen or heard of him.

Kehar Singh would have me believe that now he is at logger-heads with Puran Singh, and that since his Power of Attorney No. 67/23 was cancelled in May, 1935, he has done nothing under it, and is not on speaking terms with Puran Singh. And yet, in an attachment in another suit, when Kehar Singh's box was seized and opened by the Bailiff of the Magistrate's Court at Kuala Kangsar, in it was found a "licence to treat and store rubber" No. 8172/36 dated 14th April, 1936, (Ex. 31), authorising Puran Singh to do so, and a Bought Note for $120 in respect of 400 catties of rubber sold under that licence by Puran Singh.

In my view, Puran Singh has throughout been, and still is, a mere nominee for Kehar Singh, and now, because Kehar Singh finds that (what were really all along) his lands are in danger, he puts up Puran Singh to assert his claim, which is in fact that of Kehar Singh.

As I have previously remarked, the conduct of Bahadur Singh in purchasing the pro-notes is not above suspicion, and I am disposed to think that Amrit Kaur was, in fact, his nominee too.

The whole of the transactions in this and the other cases interwoven with it, reek with fraud; and my difficulty is to decide wherein the truth lies.

If I could decide that either party came to Court "with clean hands" I would give judgment in his favour. As it is, since I consider the plaintiff to be the mere puppet of Kehar Singh, I do not think his claim has any merits, apart from the technical defect in the power of attorney of Bahadur Singh. This defect is counteracted by the conduct of the plaintiff in accepting the benefit of other transactions carried out by Bahadur Singh, and by the fact that the transfer (if not at the time made with the knowledge and consent of Puran Singh's then lawful attorney Kehar Singh) was ratified by Kehar Singh on his return from India in October, 1933.

I dismiss the plaintiff's claim and give judgment for the defendants with costs.

Order accordingly.

The plaintiff appealed. *S. Seenivasagam* for plaintiff-appellant. Other appearance as before.

THOMAS, C.J.—At the hearing of this appeal, the advocate for the appellant stated that he did not dispute the statement of facts contained in the judgment, but he disputed the conclusions deduced from those findings of facts.

The main question argued at the appeal was that the learned trial Judge having held that the registration of Kehar Singh as proprietor of certain lands had been obtained by means of an insufficient or void instrument, viz., an invalid power of attorney, and that it was in consequence void under section 42 (iii) of the Land Code, he was wrong in holding that the plaintiff was estopped by his conduct from objecting to the registration. In support of this contention he cited *Borrow's case*, (1880) 14 Ch. D. 432 in which it is stated by Bacon, V.C., in the course of his judgment that:

> "the doctrine of estoppel cannot be applied to an Act of Parliament. Estoppel only applies to a contract *inter partes* and it is not competent to parties to a contract to estop themselves or anybody else in the face of an Act of Parliament."

This view is followed in the case of *Abdul Aziz* v. *Kanthen Mallik*, 38 I.L.R. Cal. 512, 515 in which at page 515 a long list of authorities has been set out. The Court there decided that it was not prepared to accede to the argument that the principle of estoppel overrides the provisions of either section 78 of the Land Registration Act or section 60 of the Bengal Tenancy Act.

The advocate for the second respondent was not able to contest the principle of law contained in the above authorities, but argued that the transfer had been ratified and confirmed.

So far as this is an argument on the question of estoppel it cannot in my opinion succeed, since it is only another way of saying that acts of the parties *inter se* can amount to an estoppel in respect of an Enactment. Therefore, so far as the claim asks for a declaration that the transfer in question was void, I am of the opinion that the learned trial Judge was wrong in not making such declaration. As far as that matter is concerned the judgment should be altered.

The land in question has since the trial of the action been sold. I desire to make it clear that this alteration of the judgment will not affect the position of the *bona fide* purchaser for value—(*see* section 42 (iv) of Cap. 138, Revised Laws, Land Code). Nor has it so been suggested by the advocate for the appellant. But the advocate for the appellant asks that, in view of the sale, damages should be awarded and such damages should be the same sum as the land realised at the sale. There was no claim for damages in the statement of claim, as at that time the land had not been sold, and the plaintiff (the present appellant) wished to have his land restored to him. If necessary the appellant asks that an amendment claiming damages should be allowed.

This would certainly appear to be a proper case for such an amendment (if necessary) to be made. But any question of damages must be considered in conjunction with the learned trial Judge's findings of facts. The learned trial Judge has found that:—

> " Puran Singh has throughout been, and still is, a mere nominee of Kehar Singh, and now, because Kehar finds that (what were really all along) his lands are in danger, he puts up Puran Singh to assert his claim, which is in fact that of Kehar Singh."

In the memorandum of appeal the second part of that first ground referred to the words I have just cited, and complained that the learned trial Judge was wrong in fact in so holding. In the appeal as I have already said, the advocate for the appellant stated that he did not dispute the statements of fact contained in the judgment. Apart from this there is ample evidence to support the finding of the learned trial Judge. Moreover, at the time of the transfer of the land in question in this suit, viz., the 29th of August, 1932, Kehar Singh held a power of attorney from Puran Singh, which was made on the 1st of October, 1923, and remained in force until revoked on the 11th of May, 1935.

In view of these facts it is impossible to say that the plaintiff has suffered any damage, and accordingly I am of the opinion that no damages should be awarded. In that the appellant has only gained an academic success by his appeal, the respondents are entitled to the costs of the appeal.

The money lodged in Court as security should be paid to the respondents.

CUSSEN, J.—Puran Singh, the plaintiff-appellant, was, prior to 29th August, 1932, registered as the proprietor of certain lands in Kuala Kangsar in the State of Perak. He resided in India, having only once visited Malaya about 16 years ago (1920-1921) when he remained here for a stay of about 8 months.

Kehar Singh—first defendant-respondent—is the brother of Puran Singh and held a power of attorney from him. He has been continuously resident in Malaya for many years, save for occasional visits to India. The power of attorney from Puran Singh contained a power to appoint a substitute attorney. Being about to visit India, Kehar Singh executed a power of attorney in the name of Puran Singh to one Fauja Singh, signing the instrument not as attorney of Puran Singh but as "Puran Singh". This power of attorney to Fauja Singh was a facsimile of the power from Puran Singh to Kehar Singh. A little later, Kehar Singh having gone to India, Fauja Singh, in exercise of the power of substitution, executed a substitute power of attorney to Bahadur Singh —second defendant-respondent. Bahadur Singh then became the attorney of Puran Singh by substitution. There was, apparently a single substitution owing to the power of attorney to Fauja Singh being, on the face of it, a direct power from Puran Singh; but in fact there was a double substitution: Puran Singh — Kehar Singh — Fauja Singh—Bahadur Singh.

Kehar Singh, on proceeding to India, had also given a power of attorney to Bahadur Singh.

On 29th August, 1932, Bahadur Singh, by virtue of the power of attorney (substituted) from Puran Singh transferred the aforesaid lands to Kehar Sing.

Kehar Singh owed money under a promissory note to one Amrit Kaur, and in September and October, 1932, coincident with the execution of fresh promissory notes for the debt, the titles to these lands were deposited with Amrit Kaur as security for the debt—deposited by both Kehar Singh and Bahadur Singh. Amrit Kaur in April. 1934, transferred the promissory notes for value to Bahadur Singh.

In May, 1935, Bahadur Singh, suing on the promissory note, obtained judgment against Kehar Singh for $4,400 and also an order of sale of the lands.

In Civil Suit No. 224/35 Puran Singh sued both Kehar Singh and Bahadur Singh claiming a declaration that the transfer of the lands to Kehar Sing was void;

that the Mukim Registers be rectified and his name restored therein as proprietor of these lands;

a declaration that the lands were not liable to be sold; and that the order of sale thereof be cancelled;

such further or other relief as justice may require.

The claim that the transfer of the lands was a void transaction rested upon the fact that Bahadur Singh was the substitute of a substitute attorney, and that, as the power of substitution given to Kehar Singh in the original power of attorney from Puran Singh had been exercised in the appointment of Fauja Singh the maxim "*delegatus non potest delegare*" applied and therefore the power of attorney given to Bahadur Singh by Fauja Singh was invalid.

That being so, Bahadur Singh when he executed the memorandum of transfer of the said lands, signing as the attorney of the proprietor Puran Singh, was not in fact such attorney; and the registration, by means of the transfer, of Kehar Singh as proprietor of the lands was void by virtue of the provisions of section 42 (iii) of the Land Code.

Section 42 (iii) reads as follows:—

"If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void".

The defence pleaded is estoppel—that the plaintiff, Puran Singh having accepted the benefit of the signature of the second defendant (Bahadur Singh) purporting to act under said power of attorney in respect of many other transactions in land is estopped from saying that the signature on the transfer referred to in the plaint is such as to render such transfer void or insufficient.

Puran Singh appeals against the decision.

The memorandum of appeal sets out several grounds of appeal both of fact and of law; but of these I will deal only with those that appear to me to be relevant and to which in fact the arguments of counsel at the hearing of the appeal were directed.

They were shortly that

(a) the learned trial Judge was wrong in holding that the plaintiff-appellant had the benefit of several transactions relating to his lands completed by the second defendant;

(b) that in any case, the defence of estoppel could not avail as against the provisions of section 42 (iii) of the Land Code;

(c) that the learned trial Judge was wrong in holding that Puran Singh was a "mere nominee" of Kehar Singh and that the latter was the real owner of the lands.

As regards ground (a) above I am of opinion that the finding of facts is correct; it is clear on the evidence that, acting under the invalid power of attorney, Bahadur Singh did effect several transactions in land which were clearly for the benefit of Puran Singh.

The next ground (b) proceeds from the principle that there can be no estoppel against a statutory provision in an Enactment which legislates on a matter of general public interest.

This principle is enumerated in Halsbury (Hailsham) 13, page 402 in the following words:

"The doctrine of estoppel cannot be invoked to render valid a transaction which the legislature has, on grounds of general public policy, enacted shall be invalid".

It is, I think, quite evident that the provisions of the Land Code regarding registration of title, the title of proprietors, and the method by which dealings affecting registered land may be validly carried out are matters of general public interest.

The Land Code requires that the memorandum of transfer of land shall be executed by the transferor (i.e., the registered proprietor) section 110. Section 180 provides that any person may by power of attorney authorise any person to execute all or any instruments for giving effect to any dealing with land.

The transferor himself or an authorised attorney must therefore execute the memorandum of transfer.

In the case in question the memorandum of transfer has not been signed by an authorised attorney and therefore it is an insufficient instrument.

I am of opinion, therefore, that the appellant is right in this ground of appeal and that the learned Judge was wrong in accepting the defence of estoppel.

The third ground (c) is against the finding of fact that the appellant, Puran Singh, is a "mere nominee" of Kehar Singh who is the real owner of the lands.

Counsel for the appellant submitted that there was no evidence to support this finding. I do not agree with him. In my opinion there is sufficient evidence in the record of the hearing to support this finding of fact. That being so, that finding must stand.

It appears that, since the hearing of this Civil, Suit, the lands in question have been sold under the Court Order of Sale, and it is admitted by both counsel that the purchaser at the sale gets, in any case, a valid title. Counsel for appellant now agrees that, in these circumstances, all he could get, if successful, is damages.

He has not asked for damages in his plaint but I am of opinion that, notwithstanding, in view of the situation created by the sale of the land (which took place after the filing of this appeal) this Court has power to award him damages if he was otherwise entitled to them.

But as the appellant fails to upset the finding that he was a "mere nominee" of Kehar Singh and not the real, beneficial owner of the land, it follows that he cannot have sustained any damages from what has happened. The lands sold were the lands of Kehar Singh, and they were properly sold by an order of Court in satisfaction of a decree against Kehar Singh.

For these reasons I am of opinion that this appeal should be dismissed with costs.

AITKEN, J.—As there appears to be no reason to suspect any merit in anyone of the parties to this case, I will confine myself strictly to the law applicable to this appeal.

Section 110 of the Land Code provides that "when any land is intended to be transfered, the transferor and transferee shall execute a memorandum of transfer.....".

Section 180 of the Land Code provides that "any person may by power of attorney authorise any person to execute all or any instruments for giving effect to any dealing with land".

From these two sections it seems perfectly clear that every memorandum of transfer must be executed by the transferor and transferee in person, or by some one duly authorised by a valid power of attorney to execute the same on behalf of one or the other or both of such parties.

Now the transfer in question in this case, which purports to be a transfer from the plaintiff to the first defendant Kehar Singh and bears date the 29th August, 1932, was executed by the second defendant Bahadur Singh, who then claimed to be acting on behalf of the plaintiff under and by virtue of an alleged power of attorney dated the 11th of October, 1928. It is unnecessary to go into the details of that alleged power of attorney since the learned trial Judge, in another suit between the same parties, held that that power of attorney failed to make the second defendant Bahadur Singh the plaintiff's agent and attorney. There has been no appeal from that decision, and it seems to me to be binding on all the parties to this suit and to amount to a declaration that, so far as they are concerned, this power of attorney of the 11th of October, 1928, must be regarded as having been void *ab initio*.

The next step is to consider the provisions of sub-sections (i), (ii), (iii) and (iv) of section 42 of the Land Code, they read as follows:—

> "42 (i) The title of a proprietor, chargee or lessee shall be indefeasible except as in this section provided.
>
> (ii) In the case of fraud or misrepresentation to which he is proved to be a party the title of such proprietor, chargee or lessee shall not be indefeasible.
>
> (iii) If the registration of any proprietor, chargee or lessee has been obtained by forgery or by means of an insufficient or void instrument such registration shall be void.
>
> (iv) Nothing in sub-sections (ii)or (iii) shall affect the title of a proprietor, chargee or lessee who has taken *bona fide* for valuable consideration from any proprietor, chargee or lessee whose registration as such was procured by any such means or by means of any such instrument as aforesaid or of any person claiming *bona fide* through or under him."

Sub-section (iv) has no application to the facts in this case: no proprietor, chargee or lessee had taken the lands comprised in the transfer in question from the first defendant Kehar Singh at the time when this suit was instituted. What, then, is the position? Surely this: that the registration of the first defendant as the proprietor of the lands comprised in the transfer in question, which was obtained by means of that same transfer, is a registration which has been obtained by a void instrument. It is scarely open to doubt that a transfer must be executed either by the transferor in person, or by some one duly authorised by a valid power of attorney to execute the same on his behalf; and on the 29th of August, 1932—the date of the alleged transfer —the second defendant Bahadur Singh had acquired neither of those two capacities. It follows, therefore, that the registration of the first defendant Kehar Singh as the proprietor of the land comprised in this void transfer of the 29th of August, 1932, is itself void, as provided by sub-section (iii) of section 42 of the Land Code, and that at the institution of this suit the plaintiff was entitled to have the Mukim Register at Kuala Kangsar rectified and his own name entered therein as the registered proprietor of these lands. That, at any rate, is the position as it appears to me; but since Mr. Woods argued before us very strenuously to the contrary, I must endeavour to deal with his arguments, so far as I could understand them.

Now it seems to me that Mr. Woods' arguments against the view that, at the institution of this suit, the plaintiff was entitled to have the Mukim Register at Kuala Kangsar rectified in his favour may be summarised as follows:

Firstly.—That the plaintiff is estopped by his subsequent conduct from denying that the transfer of the 29th of August, 1932, is a valid transfer.

Secondly.—That the plaintiff must be taken to have rectified and confirmed this transfer, and thus to have validated it.

Thirdly.—That the plaintiff and the first defendant Kehar Singh are really one and the same person, and therefore the plaintiff cannot obtain any relief on account of what is, in effect, a transfer by himself to himself.

Fourthly.—That the plaintiff is a mere nominee of the first defendant, and therefore cannot be granted any relief which would result in a loss to the first defendant's judgment creditors.

it will deal with them as concisely as possible and in the same order.

As to the first argument, there appears to be abundant authority for the proposition that there can be no estoppel where, as in this case, a transaction is declared by statute to be void.

As to the second argument, I do not think that it is possible, in law, to ratify a void transaction, especially one that is void by statute.

As to the third argument, I might have attached some weight to it had not Mr. Woods himself expressly admitted, early on in this case, that the plaintiff and the first defendant Kehar Singh are different persons though related by the fraternal tie. True it is that he limited that admission to this case and for the purposes of this case only; but we are still dealing with this case, and I cannot regard Mr. Woods otherwise than as bound by the terms of his own express admission.

As to the fourth argument, if A. buys lands and has them transferred to B., and then procures B.'s registration as the proprietor thereof under the Land Code; to whom do such lands belong? According to the Land Code they belong to B., and he has an indefeasible title thereto unless such registration was procured by means of fraud, or misrepresentation or a void or insufficient instrument. It is not suggested that the original registration of the plaintiff as the proprietor of these lands was obtained by any such means, and I therefore cannot see that it matters one kupang whether he was the first defendant's nominee or not.

For these reasons I am of opinion that this appeal should be allowed. We cannot give the plaintiff the relief which he asks for in his statement of claim, because the lands in question have been sold during the pendency of this appeal at the instance of the second defendant Bahadur Singh, and in execution of a decree in his favour against the first defendant. We can however, take notice of that event; and since the plaintiff is willing, in order to shorten litigation, to accept the net proceeds of sale of these lands in lieu of the lands themselves, I myself would give judgment in his faovur for that amount, which I understand is $3,520, against the second defendant. As my learned brethren, however, have arrived at the conclusion that the appellant is not entitled to any damages, no useful purpose will be served by adding an expression of my views as to the proper order to be made in regard to the costs of this appeal.

Appeal dismissed with costs.

[APPELLATE CIVIL JURISDICTION]

AITKEN, J.

September 10, 1937.

KATHIGASU .....**Appellant**

v.

BACHAN SINGH.....**Respondent**

[PERAK MAGISTRATE'S CIVIL APPEAL No. 23 of 1937]

Bills of Sale Enactment (Cap. 57), Section 11 (b)—Meaning of "Summons."—Procedure for Seizure and sale—Civil Procedure Code (Cap. 7) —Originating Summons—Jurisdiction.

The Civil Procedure Code (Cap. 7) applies to proceedings for the seizure and sale of property scheduled to a Bill of Sale given by way of security.

The word "summons" in section 11 (b) of the Bills of Sale Enactment (Cap. 57) means an originating summons.

The Court of a Magistrate has no jurisdiction to entertain any application under section 11 (b) of the Bills of Sale Enactment.

B. K. Das for appellant.

J. Dunford Wood for the respondent.

AITKEN, J.—I entertain no doubt that the Civil Procedure Code does apply to proceedings for the seizure and sale of property scheduled to a Bill of Sale given by way of security. Assuming that I am right on that point then the word "Summons" in section 11 (b) of the Bills of Sale Enactment must mean an originating summons: see definition of Originating Summons in section 2 of the Civil Procedure Code. And it follows that the Court of a Magistrate has no jurisdiction to entertain any application under that section 11 (b) of the Enactment, since no Originating Summons can issue out of the Court of any Magistrate. This appeal must therefore be allowed and with costs.

Appeal allowed with costs.

[APPELLATE CIVIL JURISDICTION]

PEDLOW, J.

November, 1, 1937.

INDUN BINTI MAT ZIN....Applicant-Appellant

v.

1. **HAJI ISMAIL BIN MUSA**
2. **ABDULLAH BIN SUHOR**
3. **MIDUT BINTE HAJI BALI**
4. **MOHAMED NOOR**

....**Objector-Respondents**

[NEGRI SEMBILAN CIVIL APPEAL No. 5 of 1937]

Non-customary land—Distribution—Custom and Muhammadan Law.

The only land which can now descend according to "custom" is "customary land" coming within the Customary Tenure Enactment (Cap. 215). As regards Malays